

**LODI CITY COUNCIL
SPECIAL CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, MAY 11, 2004**

A. CALL TO ORDER / ROLL CALL

The Special City Council meeting of May 11, 2004, was called to order by Mayor Hansen at 7:00 a.m.

Present: Council Members – Beckman, Hitchcock, Howard, and Mayor Hansen

Absent: Council Members – Land

Also Present: City Manager Flynn, Interim City Attorney Schwabauer, and Deputy City Clerk Perrin

CITY COUNCIL CALENDAR UPDATE

Deputy City Clerk Perrin reviewed the weekly calendar (filed).

B. REGULAR CALENDAR

B-1 “Approve plans and specifications and authorize advertisement for bids for installation of streetlights on Phase IV of the streetlight completion project and authorize the transfer of funds for the project (\$980,000)”

City Manager Flynn reminded Council that at last week’s meeting a question was raised as to whether or not Electric Utility System Revenue Certificates of Participation (COPs) could be used for the streetlight completion project. Staff provided Council with COP documentation (filed), which specifically authorized it. The project phases were funded with COPs over four previous meetings and each time it was clearly disclosed. He recommended that Council approve this project as proposed by staff.

In response to Mayor Hansen regarding the public benefit program annual budget, Electric Utility Director Vallow stated that the current program year’s budget is \$750,000 to \$775,000. He explained that there is an annualized formula amount, mandated by the state, which is 2.85% of gross retail revenues (approximately \$1.1 million). The reason for the smaller amount is the City takes credit for certain Northern California Power Agency activities that fit under that program and because the program was overspent when it first began. At the end of this two-year budget cycle, it will be back on track with approximately \$1.1 million per year. The public benefit program is auditable by state agencies, and the City expends the funds in a good faith effort to meet the intent of the law.

In response to Mayor Hansen, Mr. Vallow replied that COPs, not public benefit program funds, have been used to pay for each phase of the streetlight completion project. Public benefit funds are used for energy efficiency retrofits, for which the streetlight completion project does not qualify. In the upcoming phase, there will be replacements of 60- to 70-year-old light standards; however, it is not in the context of energy efficiency; it is more for safety. The funding used to pay for the project is from the original 1999 COP dollars.

Mr. Vallow explained that there will be one more phase, Phase V, and most likely a “cleanup” Phase VI, which is on track with the three- to five-year construction schedule originally anticipated by staff. Presently, \$2.8 million has been spent on the project, and at the completion of all phases, the total expenditure will be approximately \$3.8 million, which is in line with the original estimate of \$3.5 to \$4 million.

Council Member Hitchcock questioned if the various streetlight projects have been paid out of different accounts or if it was all from the streetlight completion account.

Mr. Vallow responded that originally staff began with east side street and alleyway lighting, which was done before COP funds were available; payment came out of the operating fund. Subsequently, the City Council adopted a reimbursement resolution, which enabled staff to capture certain capital expenses from the COPs dating back to 1998. From that point forward, the funding source for the streetlight completion project has come from COPs.

Mr. Vallow explained that the Business Unit 161672 (streetlight completion project) account, as referenced in many of the Council Communications, does not have a funding balance; it is a location in which to notice various expenses. To use COP funds, staff must provide proof of payment to a contractor and authorization from Council to pay the invoice. When expenses occur they are recorded into the 161672 account, and on a quarterly basis, Finance will seek reimbursement from the COPs. Additionally, there are sub-capital accounts for purchases involving an assortment of projects, which allow staff to track labor, material, and inventory.

John Simler, Electrical Estimator, added that Electric Utility often does an advance buy-out of supplies for various projects, which may be installed by staff or a contractor.

Council Member Hitchcock expressed her confusion over the different account numbers used, in addition to the streetlight completion project account, the total for which calculates to approximately \$5 million. She questioned if it was all charged to the COPs.

Mr. Vallow explained that the COP is the total ultimate funding source for the project. \$5 million appears to be double the actual number, which would be correct; half represents the ultimate funding source, and the other equals the pieces of the project that were awarded. There are no physical dollars associated with a COP authorization from Council—nothing has been spent. All of the various aspects of the project should add up to the amount being requested from the COPs. If the amount needed is more, staff returns to Council for authorization.

In response to Council Member Hitchcock, Mr. Vallow further explained that the purchase of luminaires and standards, for example, are ultimately charged to the COP. If Council approves \$980,000 of COP funding, Council would see other agenda items adding up to that figure.

City Manager Flynn pointed out that previous Council Communications clearly state that the funding is the Electric System Revenue COPs. When Council accepts improvements, staff returns with the same account.

Council Member Hitchcock reiterated that the various account numbers total \$5 million; however, the four COP authorizations total \$2.967 million.

City Manager Flynn explained that staff will typically request that Council approve plans and specifications, award a contract, and accept the improvements for a project, which represents a double accounting of the number under the same funding source.

Referencing the streetlight completion project timeline (filed), Mr. Vallow explained that Phase I began in 2000, which included awarding the contract for installation and acceptance of the improvements. In between, there were purchases of material, engineering charges, and staff time charged to the project, which flows into the total amount and becomes part of the budget. All of the separate purchases for lights that staff made over time are added into the figure. If there is a shortfall, staff would then request an additional authorization from Council.

To summarize the process, Council Member Hitchcock confirmed that all of the approvals for luminaires and standards are eventually charged to the streetlight completion project account, but it does not come out of the COPs until the final request comes through, the total of which would include all of the components of the project. Mr. Vallow agreed, stating that it is the master budget for the phase of that project, which allows staff to begin soliciting bids.

Council Member Hitchcock questioned where the specific authorization was that allows this project to be charged to COPs. She recalled that Council was well into the middle of putting together the bond before former Mayor Nakanishi came up with the streetlight project.

City Manager Flynn responded that it is in the installment purchase agreement, Section 7.02, "Use of Proceeds," which states the Corporation and the City agree that the proceeds of this contract will be used by the City as agent for the Corporation to pay the costs of the existing facilities and the 1999 projects, including the reimbursement to the City of amounts advanced for such costs. The 1999 projects include dusk to dawn lighting and streetlight design. It was in all the documentation at the time the COP was adopted by Council.

Mr. Vallow agreed that it is difficult to find in the official statement of the financing documents. The specificity exists in the installment purchase contract between the City and the underwriter. Mr. Vallow stated that staff has followed the list of 1999 projects, as set forth in the COP documentation.

Council Member Hitchcock stated that she has a different definition of dusk to dawn lighting as projects where streetlights or lights were added to existing poles or a specific area, such as an alleyway, and the customer paid a monthly fee.

Mr. Vallow acknowledged that Electric Utility does still do this and has a rate referred to as dusk to dawn lighting. Safety and street lighting is considered dusk to dawn as well.

Council Member Hitchcock pointed out that the budget shows dusk to dawn lighting at \$2,200 for both 2003-04 and 2004-05 and questioned how this can be the streetlight completion project.

Mr. Vallow stated that definitions do transition over time; however, he is certain that staff would not have used COP funding for a \$2,200 a year expenditure. This dusk to dawn lighting definition is a bit different, as it involves lighting on someone's physical property, some of which have public access and others that do not. This dusk to dawn program existed before Electric Utility began installing lights in alleyways.

Mayor Hansen stated that the first three phases of the streetlight completion project have been budgeted in the past out of COPs, and the issue for Council now is does it want to approve this project or not. The definitions are not going to change the basic concept of whether or not to go forward with the recommendation for Phase IV. The documentation is thorough and illustrates that it has been done previously.

Council Member Hitchcock believed that the streetlight completion project should not have been funded by the COPs, based upon what is stated in the installment purchase contract. There is nothing in it that allows this project, and these contracts are very specific—the City must spend the money for what it was borrowed. This project was created after the COP funding was in place, and she felt it was not intended to be used for this purpose. If the documentation had stated streetlight completion project or street lighting, it would have been acceptable; however, dusk to dawn is entirely different.

Mr. Vallow pointed out that the budget lists dusk to dawn lighting in two separate places: in the capital budget for \$2,200 and under system improvement, dusk to dawn lighting, for \$917,000.

City Manager Flynn responded to Ms. Hitchcock that the basic line is distribution system improvement, dusk to dawn, \$919,200.

Council Member Hitchcock countered that the distribution system improvement is the total of the two: the distribution system improvement for \$917,000 and dusk to dawn lighting for \$2,200. Ms. Hitchcock requested that Mr. Vallow provide her with the voluminous COP documentation to which he referred earlier.

Mr. Vallow assured Council that the intent when this project was brought before Council in 2000 was to use COP dollars.

Council Member Hitchcock requested to be provided with a complete accounting of the Electric Utility COP, the number of projects, and what has been purchased.

Council Member Howard expressed concern about this morning's discussion and the underlying accusations against staff about wrongful use of money. She believed that staff has not done anything incorrectly and that the communications consistently show to Council and the public the purpose and use of these funds. She pointed out that Council Member Hitchcock's support of this project goes back in documentation to August 2000, and there are times that she made, seconded, or approved the motion. This is a good project, and it has been shown with sufficient documentation.

Council Member Hitchcock responded that the documentation proves that when the funding source was from COPs she did question it. When the funding source came from the 161672 account, which she believed to be coming out of Electric Utility's operating budget, she did not question it. She apologized to the community and to Council if she voted incorrectly; however, she was under the impression that this was a project authorized in the COPs. She now believes that the City has been using COPs incorrectly, because the streetlight completion project was not approved as part of the installment contract. She began to look deeper into this because of the money the City shifted and borrowed from various funds, for which there is no plan for repayment, and because of Mr. Flynn's comment the other night when he said he was comfortable with the City operating in the red with the transit system for these last five years.

Mayor Pro Tempore Beckman requested that from this point forward staff be very clear in the streetlight completion project so there is no language that would confuse it with any other on-going lighting project.

MOTION:

Mayor Pro Tempore Beckman made a motion, Howard second, to approve the plans and specifications and authorize advertisement for bids for installation of streetlights on Phase IV of the streetlight completion project and authorize the transfer of funds for the project (\$980,000).

DISCUSSION:

Council Member Hitchcock requested that Mr. Vallow contact the City's bond counsel for clarification on this project. Mayor Hansen suggested that it be in writing.

VOTE:

The above motion carried by the following vote:

Ayes: Council Members – Beckman, Howard, Land, and Mayor Hansen

Noes: Council Members – Hitchcock

Absent: Council Members – None

Council Member Hitchcock further requested an itemization of the expenditures for the Electric Utility COPs, what has been paid, and what still needs to be paid. Additionally, she would like to see a detailed listing of the project with the costs and those items that have been purchased checked off the list.

Continued May 11, 2004

C. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 7:51 a.m.

ATTEST:

Jennifer M. Perrin
Deputy City Clerk